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THE USES AND ABUSES OF SECONDARY AUTHORITY.*

EVERY lawyer knows the difference between primary or real authority, and that class of so-called authority designated secondary. Real authority is that officially imposed or accepted by the State as the rule of decision in juridical trials. It may be written, as exemplified in constitutions, treaties, statutes and ordinances; or unwritten, as found in the decisions of the courts, whose sole function it is authoritatively to declare and interpret it. Whether the courts make or merely declare the unwritten law, we need not here pause to consider. When one stops, however, long enough to compare the unwritten law of the present day with that of a century ago, he may well hesitate to assent to the ancient theory that the judges do not make the law but merely discover and declare it.

Though much might be said as to the condition of our written or statute law, for present purposes we shall eliminate the written law from consideration, and confine our attention to the *lex non scripta* or common law.

The main purpose of the present paper is to direct attention to some features of our modern legal literature—if the term be permissible—and to certain hindrances, as they appear to me, to a clear and accurate exposition of legal truth by those to whom, in the economy of our judicial administration, this delicate and important function is confided—namely, the bar and the courts—and to offer a few suggestions for the betterment of existing conditions.

Our postulate is that judicial decisions are the only sources and the sole authoritative evidence of the unwritten law—or, for purposes of our classification, judicial decisions constitute the only real or primary authority. We may say, then, with sufficient accuracy for present purposes, that every principle of

*Portion of an address delivered by Dean W. M. Lile, as President of the Virginia State Bar Association, at Hot Springs, Va., July, 1913.

the common law has it source and sanction from the adjudicated cases.

But there is a large and constantly increasing mass of so-called authority, avouched as evidence of the unwritten law, which we may designate as secondary authority. This class includes all extra-judicial efforts at legal exposition—such as text-books, encyclopedias, editorial annotations, *obiter dicta* of the courts, digests, etc.

Such has been the marvelous increase in the number of volumes of this secondary authority, even within the memory of those of us for whom life is yet in its prime, and such have been the influences, for good or ill, of this vast and ever-growing bulk of secondary authority, that it may be worth our while to consider something of secondary authority in general, and something of the nature of this flood of extra-judicial legal statement in particular, and its effect upon our jurisprudence. Is the flood a fertilizing one or the reverse?

To the lawyer of even a generation ago, the modern law library would present a bewildering aspect. He would find scores of volumes, with titles as new and strange as the uses they are meant to serve.

No one denies the value of scientific classification, and of philosophical comment on the decisions of the courts. But howsoever honestly and intelligently done, no text-book or commentary can ever be other than what we term in the law of evidence second-hand or hearsay testimony. None knows this better than the secondary writer himself. On every page he confesses to be but trying to follow the decisions of the courts—feeling after the law, if haply he may find it. He may criticise a particular decision, or line of decisions, but he offers in lieu of the objectionable rule not some principle from the depths of his own consciousness, but one assumed to be already judicially established. In short, our secondary writer is a self-appointed, unofficial compiler and interpreter, who undertakes to classify, condense and re-state in his own language, principles previously enunciated by the judges. Whatever in theory may be the *raison d'etre* of these non-judicial expositions, their chief purpose and use are to serve as short-cuts to the law as found in

the decisions. They are to the lawyer what translations of the classics are to the student.

Where such work is that of a sound lawyer, and is skilfully and conscientiously done, the result will be a valuable contribution to the science of jurisprudence. But, unfortunately for legal science, it is rare in these commercial times that the expert has the leisure or the inclination to assume the task of legal authorship. The result is that such work has largely fallen in the hands of those who adopt the vocation of law-writing rather to eke out a livelihood than from love of the law.

Blackstone, Kent, Story, Greenleaf, Bishop, Pomeroy, Cooley, Minor and a few others have left an indelible impress upon our jurisprudence. But in spite of the vastly widened field and the enlarged demand for legal research, these great writers have few successors. One may almost count upon the fingers of one hand, and certainly upon the fingers of two hands, the really philosophical law treatises issued within the last twenty years.

Undoubtedly marked progress has been made in the field of digesting and of classification. The completion of the American Digest, in which, under a scientific classification, effort is made to digest every reported decision of every American court of last resort, marks an era in the history of legal publications. Under its elaborate system of classification, cross-references and other ingenious mechanical devices, one may in a few moments, and almost without effort, exhaust the primary authorities on any specific point.

Other valuable aids to the searcher after the desired authorities are the well-known encyclopedias and annotations to selected cases.

But none of these speaks authoritatively. They are but search-books—sign-boards, as it were, along the road to the real and only exponents of legal truth, namely, the decided cases. And one who is content to rely on these as real authority has misconceived the function of such volumes.

Coming back to our line of thought—the lack of successors to the great writers of the past—it is not our complaint that secondary writing has languished in quantity. On the contrary, the bulk has enormously expanded. Such works are being published and exploited as never before.

The large majority of these volumes, however, are but inaccurate and inexhaustive digests. The chief ambition of those who put them forth seems to be to pad foot-notes with a multitude of citations—the bulk of which are foreign to the principle asserted, or easily distinguishable, or dependent on local statute, or else are directly contradictory of the text. Where authorities are in conflict, little or no effort is made to distinguish or reconcile them, or by legal reasoning to demonstrate the true principle. Hence the wider the experience one has in the use of our current secondary authority, the more one distrusts it, and the more one is inclined to charge our modern law-writer with the borrowing of his matter largely from digests and head-notes instead of extracting it by brain-sweat from original sources.

Nor is the explanation of the situation far to seek. As already suggested, our modern writer is a professional compiler. Often he is employed on a salary by publishers who have planned a particular volume or series, and who propose subsequently to exploit it as a commercial venture. Instead of authors seeking for publishers, as in former days, publishers now industriously seek for authors, and employ them on stated monthly or yearly salaries. Writing as such an author does, for a livelihood and not for fame or love of learning, his heart is not in his work. He sings not like the linnet, because there is music in his soul, but for the sake of bread. Who wonders that his rhythm halts and his notes ring false? He and his publishers have discovered that whether the work be good or bad, if the table of cases be voluminous and the volume be bound in sheep or buckram, lawyers will buy it freely, and courts will lend it a willing ear. Why then should our writer spend weary hours in the tedious task of studying his topic from original sources, when he may take his propositions ready-made, from the reporter and the digester, and by a mere mechanical process, without the expenditure of intellectual effort, produce his finished product in the shortest possible time?

Not all of our secondary authority is subject to this characterization. But I am assured that the larger part of it is, and that the commercial spirit of the age has entered deeply into the

making of law-books, until one may almost say that, in the main, the process is mechanical and the spirit commercial.

When we stop to consider how quickly, by the use of the American Digest, along with its Table of Cases and its Key Number System, plus a pair of scissors and a bottle of paste, one may construct a law-book, covering the whole field of a given topic, we are tempted to believe that whatever debt of gratitude is owed to the enterprising publishers of this monumental digest, its influence in the encouragement of amateurs to enter the field of legal authorship has been, and will continue to be, a distinctly unfortunate one.

Thus far nothing has been said in extenuation of the errors and defects in even the best of secondary writing. As compared with the work of the judges, the former is prosecuted at a vast disadvantage. The court tries but one, or at best but few, questions in each case before it. These questions are (or should be) thoroughly debated, *pro* and *con,* by learned and industrious counsel, who, with the life, liberty or property of the client at stake, are incited to exhaust every possible argument, and to cite, analyze, uphold or condemn every authority that seems to bear upon the question or questions at issue. Thus every phase of each question is threshed out, and thus the court is supplied with material for a correct conclusion, and for the preparation of the opinion to follow. Besides, the judge to whom is assigned the preparation of the opinion has the advice and counsel of his colleagues, who, like himself, have been elevated to their high positions by reason of their preëminence in the profession. After such a threshing out of the question, first by counsel and then in the conference room, the chances of error are reduced to a minimum. And yet the testimony of defeated counsel or the evidence of overruled precedents is not needed to convict the most learned courts of occasional error.

If then, with these safeguards, the decisions of the courts are not infallible, what are we to expect of even the highest class of text-writers, whose work is done in an altogether different environment?

In the first place, the text-writer is confronted not with a single question, but with the whole field of his chosen subject,

and with every conceivable question within the purview of his topic. He lacks the aid of oral debate and the written argument of counsel for study and reflection. He must by turns be counsel for either side, and then sit in judgment on his own arguments. He must grope through the books for himself in search of authority, which, when found, he alone must weigh and interpret. Nor do questions under investigation possess for him the life and interest with which they were clothed in actual litigation.

It is impossible, therefore that our writer's work should even approach the faultless, howsoever honest and learned and industrious he may be. Indeed, we may rather wonder how much of error he escapes.

If what has been said thus far has any purpose it is a threefold one, namely, (1) To animadvert upon the commercial spirit of our modern law-book making, and the consequent deterioration of the quality of legal authorship; (2) to recall to your minds the functions of secondary authority as merely those of guides to the primary authorities, and as aids in the interpretation of them; and (3) to deprecate the growing tendency of the bar and of the courts to elevate the secondary writer to the high place of a law-giver, co-equal with that of the judges themselves.

This tendency of bench and bar unduly to exalt secondary authority, will bear elaboration. In late years it is especially marked in the opinions of courts of last resort.

The decision of a court of final appeal has a far-reaching effect. Such a decision not only fixes the rights of the parties litigant, but it establishes a precedent that may become the measure of the rights of every citizen of the State or Nation, and of millions yet unborn. When such a court is called upon to decide questions of right between man and man, and incidentally to incorporate a given principle definitely and permanently into the law of its local jurisdiction, it should not be content to justify the soundness of the principle, and to trace its pedigree from established precedents, by anything less than first-hand testimony. Hearsay evidence on questions of fact has long been under the ban of the courts, and I am almost radical enough to

express the wish that hearsay legal statement might be brought into like condemnation.

When a judge of the appellate bench is thus tempted to trust to secondary authority in the preparation of an opinion, one might wish that some good spirit would whisper a word of caution into the judicial ear. This caution might be expressed somewhat as follows:

"This question rests on common-law principles. These principles are authoritatively expressed in the decided cases, and in these only; and the court means to apply the doctrine of *stare decisis*. The volumes containing the reports of these decided cases are supplied by the State, and are at the court's elbow. The industry and ingenuity of the modern digest-maker has made these authorities readily accessible. They are fully cited in counsel's briefs—or if counsel have not thus done their duty, they should be required to do it by supplementary briefs. It is true that what purports to be a statement of the law of the case is found in the well-known series, 'Short Cuts to the Law,' with much expanse of cited authority. But the court knows nothing of the author of this particular article or text, possibly not even his name. Indeed, if named, the court is by no means sure that much of his work was not done by proxy. It is not unlikely that his expressed opinion that the weight of authority sustains a particular principle, is founded on a comparative count of the paragraphs under this topic in the American Digest, with an occasional glance at the reporters' head-notes, and not by a careful analysis of the cases themselves. The odds are, therefore, that your honor has before you not a second-hand statement of the law, but a statement at third or fourth-hand. The secondary writers depend upon the courts, directly or indirectly, for their material. If the courts in turn take their material from the text-writers, the result is a process of breeding in and in that makes sure the perpetuation of error."

Opinions that ignore this whispered admonition, even if they providentially escape error, reflect little credit on the courts from which they emanate, and contribute nothing to the science of the law.

Much has been said in late years, illustrated by statistics, as to the comparative standing of the appellate courts of America. This suggests some inquiry into the characteristics of the judicial opinion that give it strength and permanent lodgment in the confidence of the profession at large.

While it is impossible to lay down hard and fixed specifications for the model opinion, surely every opinion should carry conviction on its face. Cases may occasionally arise, of so intricate a nature, or in which authority and reason on the one side seem so nicely balanced by authority and reason on the other, as to render this test a too exacting one.

But taking the cases as they normally arise, an opinion that does not contain within itself convincing evidence of the soundness of its conclusions on questions of law, fails to completely accomplish its mission. The rule of law announced may be sound. The decision may settle the rights of the litigants. The principle established may become a local precedent until overruled. But there the influence of the opinion ends.

But an opinion may ignore secondary authority, and may rest its conclusions on the decided cases, and yet fail to measure up to our standard. A statement by the court that certain authorities cited sustain a certain principle—even though accompanied by quotations from the language of the opinions in the cases cited—lacks convincing force. In a later place objections to this method of attempting authoritatively to establish a legal proposition will be again referred to. The opinion is a departure from the ideal unless there be an analysis of the cases on its very face, so that every reader may for himself follow the process and check up the results, without the necessity of testing the authorities cited in order to ascertain whether these authorities do in fact warrant the conclusion reached. Every student of the law knows how many judicial opinions fail on this last test—how often the authorities cited fail to sustain the propositions announced.

The chief good that comes from this analytical method of draughting an opinion is that the court itself tests its own work, and by thus reasoning from precedent to precedent demonstrates the accuracy of its conclusions.

The writer of a judicial opinion from a court of final appeal, has peculiarly strong incentives to set a high standard for his work. Justice to the parties is, of course, as it should be, the uppermost consideration in the mind of every judge—and the record of the judges of our day for purity of motive and freedom from improper influences, has not been excelled in any age. A second consideration is the knowledge that the principle established is destined to become a measure of the rights of other litigants in other courts. And lastly is the thought that, unlike the ephemeral literature of the commentator, his own work, whether good or bad, will be preserved, and accredited to him by name, in the published and imperishable records of the court, to serve as a help or a hindrance to future searches after legal truth, long after the author himself has passed off the stage of his judicial activities. A judge speaks, therefore, to and for the whole common-law world—and especially for its courts, practitioners, teachers, commentators, and students, and their successors to the remotest generation. Thus, with posterity for an audience, a judicial opinion is as imperishable as song itself. Mr. Justice Shallow lives for us only because of Shakespeare's portrait of him. Our judges fix their own portraiture in the preserving material of the law reports, as the mammoth has fixed his in the glaciers, or as some slighter congener in the granite of the hills.

I am not unaware of the clamor for brevity in judicial opinions. Our reports are growing in size and number, at a pace that already taxes our purses and our library space. One stands aghast in the contemplation of another century of legal reporting. If opinions of the character described shall necessarily occupy more space, and thus increase the number of volumes of reports—which is not conceded—the effect will be but to hasten the solution of the already pressing problem of reform in law reporting. How this relief shall come is fortunately not within the scope of this paper. It is enough for us, in the meanwhile, to contribute each his mite toward the coming of that millenium for which every lawyer should strive, when law shall be a real science, and justice a certain measure.

And now having ventured to lecture the courts on methods

by which they may further the science of jurisprudence, let us take a similar liberty with the work that the gentlemen of the bar are doing toward the same desirable end.

It is almost an axiom that a case well argued will produce a good opinion. That a lean argument means a lean opinion is, in general, equally true. If, therefore, the bar of any State, should at any time note a tendency toward lean opinions from its highest court, let it take thought of its own contributions to these opinions.

It is the business of counsel to supply the bulk of the material out of which the opinion must be constructed. If the material be unfit, and the result be disappointing, the fault lies more at the door of the supply-man than of the builder.

What work does the bar expect of a court of last resort, in the preparation of its opinions? The question is answered in the character of the briefs which the members of the bar submit to the courts.

My position as teacher brings to me a multitude of these briefs, from all parts of the country. Many of these are distinctly of low standard, and far from the ideal. Often the leading thought as they are laid aside is one of commiseration for the court.

Whatever other features a brief should possess, there are three that seem of especial importance, in connection with our topic.

In the first place, the facts of the case, as counsel believes them to be, should be stated at the outset. It is a trite but true saying that a good statement is a case half won. This statement should be clean and clear-cut, and should be revised and re-revised until every non-essential detail is eliminated, and only the essentials remain in distinct outline. Such a statement permits the court at the beginning, and without effort, to grasp counsel's theory of the facts, with reference to which his argument of the law is to be addressed.

This should be followed by a terse statement of the principle or principles of law which counsel conceives applicable to the facts.

Thus, at the inception of the argument, the court is in possession of counsel's theory of the facts and the law of the case, and prepared to follow him intelligently in the argument.

In beginning the argument of the law of the case, instead of plunging at once into the authorities, counsel should first address himself to the principles asserted, and to the reasons which support them. As soon as an unfamiliar legal proposition is announced in argument, the mind of the court, true to its legal instinct, begins to debate within itself whether the proposition be sound or unsound. This seems the psychological moment, therefore, for furnishing the court with the legal reasoning upon which counsel conceives the proposition to rest. True, authorities to be quoted later are expected to sustain the proposition, with the reasons, but the sooner the court is put in possession of the principles involved, and the reasons upon which they rest, the more effective will be the appeal to the judicial mind. Nor can one over-estimate the value of this portion of the brief to the court, in reaching a right conclusion, and in the preparation of the formal opinion. Special prominence should therefore be given to the argument on principle and reason, in advance of the discussion of the authorities.

Coming to a consideration of the argument on authority, it would be vain to condemn the citation of secondary authority in a brief. Nor is such practice here necessarily reprehensible. When counsel appeals to secondary sources no such solecism is committed as when a similar appeal is made by a court of last resort. But such authority should be cited by the brief-maker as cumulative evidence only, and never at the sacrifice of primary authority. Indeed, as already suggested, a marvelous advance toward the evisceration of legal truth would be accomplished if secondary evidence in all issues of law were placed in the same condemnation with secondary evidence in issues of fact.

But it is in the handling of the precedents upon which counsel relies that the skill of the brief-maker is tested, and the aid rendered the court made most effective.

Observation leads one to the belief that in a large proportion of the briefs filed in the appellate courts, counsel's methods of handling the precedents relied on serve as hindrances rather than helps to the court, in its efforts to weigh and properly value the authorities cited. Conscious efforts to confuse or mislead the court are apart from our discussion. These belong to the domain of legal ethics.

To determine with accuracy the point or points which a given decision, of even a minor degree of intricacy, is a precedent, requires a delicate legal sense, and a minute and painstaking study of every feature of the case as reported.

In pursuit of the elusive doctrine of a case, there are three chief features to be considered—the facts, the words of the opinion, and the decision. For the ascertainment of the doctrine established by the case, the first and last are generally of greater importance than the opinion itself.

No opinion is of value unless the facts upon which it is based are known. When the facts and the decision are known, the resulting rule of law may usually be deduced without reference to the opinion save for the purpose of ascertaining what facts were judicially regarded as affecting the result.

For instance, if the facts are that plaintiff was injured by defendant's locomotive while trespassing on defendant's track, and that the collision might have been avoided had the engineer been on the lookout—and the decision is that defendant is not liable in damages for the injury—the resulting rule of law is at once apparent, without reference to the opinion, namely, that a railway company owes no duty of lookout to a trespasser. By a slight alteration of the facts, a different result may be reached —where, for instance, the engineer was aware of the plaintiff's danger, but made no effort to avoid the collision. Another slight alteration of fact, and again the defendant may escape liability—for example, the plaintiff, in full possession of his faculties, knew of his own danger, yet himself made no effort to avoid the accident. In each of these cases, the opinion is of little importance in deducing the rule of law applied, except for the ascertainment of the facts regarded by the court as material. It is therefore the facts and the decision, rather than the opinion, that determine the true doctrine of a reported case.

It follows, then, that properly to understand the precise doctrine of a reported case, and to estimate its value as a precedent, a knowledge of the pertinent facts is vital—and the failure of counsel to possess himself of the precise facts, and to put the court in possession of them, is a failure himself to comprehend, or to assist the court in comprehending, the real value of the case as authority.

When the facts and the decision are compounded and tried in the crucible of legal analysis, the resultant legal rule is the doctrine of the case, whether the doctrine itself be sound or unsound. By no use of words can the court extend, limit or qualify this result. As the compounding of certain chemicals produces a certain product, in spite of the incantations of the chemist, and as the tuning fork produces a certain note, unaltered by the uncultured ear that hears it, or the untrained voice that attempts to reproduce it, so the judicial disposition of a case, on a fixed state of fact, produces a doctrine which the court, by no words that it may utter in its opinion, can alter—a doctrine to be ascertained only by scrutinizing the facts through the medium of the decision. A certain combination of notes produces a musical chord. The silencing of a single note, or the introduction of a new note, may produce a more pleasing effect, but the old harmony is altered.

None but the poet may hear the music of the spheres. None but the legal artist may catch and reproduce the true harmonies of our judicial music.

I have already said that the court cannot, by any language of the opinion, or by any attempt to put into words the rule of law deducible from the decision, extend or limit the true doctrine of the case. Indeed, it constantly happens that in deciding a case the court itself is unaware of the real doctrine it has applied—since there were other facts present in the case, but only subconsciously in the mind of the court.

For illustration, let us imagine a court organized by the members of some monastic order, in the ancient days of courts of casuistry. A brother who for the day has been assigned some duty beyond the walls, reports that he met a blind beggar on the highway, much in need of alms. He submits to the court the question of his duty towards the beggar. After argument the court decides that it was his duty to assist the beggar, with alms. An opinion is accordingly prepared by the presiding abbot, justifying the decision, and announcing the rule of conscience to be that "it is the duty of each member of this order to assist blind beggars in need of alms." And this rule is entered upon the records of the court, as a precedent for the guidance of the brethren in future cases.

Now, as will presently appear, this was not in fact the rule really deducible from the decision. The court may have thought so, and so stated in its opinion, but it discovers its mistake in the next case to be illustrated.

At a subsequent session of the court, another brother reports that on his errands of mercy he has met another blind beggar, in sore need of alms—but that the beggar was a notoriously unworthy fellow, who would spend any alms bestowed in drink at the nearest wine shop. Again argument is had, in which stress is laid upon the former ruling; and the language of the court in stating it is quoted, namely "it is the duty of every member of the order to assist blind and needy beggars," without qualification. But the court now perceiving, for the first time, the error—not in its decision, but in the broad form in which the rule was stated—decides that there was no duty in this second case, and orders the formal statement of the rule on the records to be amended so as to read thus: "It is the duty of every member of the order to assist blind and needy beggars, provided they are worthy."

By the time the brothers have familiarized themselves with the new rule, as formulated, a third case arises, in which the blind beggar was needy and worthy, but the brother who encountered him was himself without means of aiding his distress. The two former precedents are quoted and pressed in the argument, but again the rule is qualified, and now made to read that "it is the duty of every member of the order to assist blind, needy and worthy beggars, when means of aid are at hand." And so the illustration might be continued indefinitely. As new circumstances arise, the language in which former precedents were expressed—which we now perceive to have been immeasurably broader than the facts or the decision warranted—becomes narrowed more and more until its original form may be wholly lost.

The real decision in the first case was one thing—the statement of it by the court was a wholly different thing. And so with the results in the cases that followed.

The same situation is constantly presented in our own precedents. The court itself misconceives the real note it has

sounded until later examination, from a new view-point, discovers it.

The truth is, then, that the real principle for which a case is a precedent becomes apparent rather from the facts and the result, than from the words in which the court formulates it.

So much for the important role that the facts play, and the less important part that the opinion plays, in fixing the doctrine of a reported case; and the consequent necessity of a minute knowledge of the facts consciously or subconsciously present, in determining the true value of cases cited as precedents in legal argument.

It follows that no mere quotation by the brief-maker from the words of the court, howsoever strongly expressed, unless these reveal the precise situation of fact, will convey with certainty the rule of law for which the case is a precedent. When confined to the case in which it was used, the language may be ever so appropriate, and yet misleading when applied to a different state of facts. Besides, every lawyer knows that judges will occasionally go beyond the necessities of the case in hand, and express *obiter* opinions or irrelevant points. These extra-judicial expressions are universally condemned as not authority of the highest order. As already suggested, no court has power to decide any other than the case before it; and any attempt, consciously or unconsciously, to create a precedent broader than the instant case warrants, is extra-judicial, and ineffective as imperative authority.

The real doctrine of a case is found, then, not in what the court said, but in what the court decided.

At the risk of prolixity, I have thus emphasized the important part that the facts of any decided case play, in fixing the value of the case as authority.

This has been not without design. The inducement to dwell at such length on what is familiar learning is that mo t lawyers ignore it in the preparation of their briefs.

Coming back to our discussion of the use of primary authority in the brief, and making practical application of what has just been said in connection with precedents as authority, one will

readily perceive the advantage, nay the necessity, in the interest of both the brief-maker and the court, of accompanying the citation of every case seriously relied on, by a statement of the material facts—or, to express the same idea negatively, the unwisdom, of filling briefs with mere statements of legal rules, bolstered up by citations of cases, or by extended quotations from these, without a statement of the accompanying facts of each case.

In the absence of such analysis, citations of reported cases and quotations from opinions are but invitations to the judges to go to the library, find the volumes, search out the cases, and patiently work out for themselves the meaning, relevancy and value of each—a task that should not be laid upon the judges, and one peculiarly incumbent upon counsel.

If the judges of our courts of final appeal, with dockets crowded and litigants clamoring for a decision of their rights must choose between mental and physical drudgery of this sort, and recourse to secondary authority, the blame seems to lie rather at the door of counsel than of the court.

If the brief, on the other hand, contains a skillful analysis of the cases relied on—with the facts, the decision, and the reasons supporting the rule applied—the latter supported by quotations from the opinions—quotations which, preceded by a statement of the facts, are now luminous with interest—the brief not only becomes of vastly more persuasive force, but it lightens the labors of the court, furnishes greater security against error, removes the seductive influences of secondary authority, and makes possible the ideal opinion.

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